

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 83 of 1995

in

SPECIAL CIVIL APPLICATION No 2119 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL Sd/-

and

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO  
1 to 5 No
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AHMEDABAD MUNICIPAL SCHOOLBOARD & ANR

Versus

APLONIYABEN J CHRISTIAN

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Appearance:

MR SM MAZGAONKAR for Appellants  
NOTICE SERVED for Respondent No. 1  
MR KH BAXI for Respondent No. 4  
UNSERVED-EXPIRED (R) for Respondent No. 15

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CORAM : MR.JUSTICE B.C.PATEL  
and  
MR.JUSTICE D.H.WAGHELA

Date of decision: 29/02/2000

ORAL JUDGEMENT (Per D.H.Waghela, J.)

The Ahmedabad Municipal School Board, being aggrieved by the order passed by the learned Single Judge on 4th May, 1994 in Special Civil Application No.2119 of 1992, has preferred this appeal.

2. It appears from the record that petitioners Nos.1 to 16, respondents herein, are Primary Teachers who were working in the primary schools run by the Ahmedabad Municipal School Board. They had joined the Contributory Provident Fund Scheme (CPF Scheme) and had retired after 1.4.1978 when option was offered for the last time to opt for pension scheme. The pension scheme had come into existence since 1960. As the respondents had joined services before 1960, it was optional for them to continue in the CPF Scheme or opt for the newly introduced pension scheme. As submitted by the appellants, the respondents were given five opportunities to opt for the pension scheme by virtue of several Government Resolutions starting from the Resolution dated 10.10.1961 to the Resolution dated 1.2.1978. However, the respondents had chosen to continue in the CPF Scheme and not to opt for the pension scheme. On the other hand, the only retirement benefit scheme applicable to other staff of the Municipal Corporation was CPF Scheme till 1983 and the pension scheme was introduced with effect from 1.1.1983 for the first time. The time for exercising option for such staff was extended upto 30.4.1987 and necessary circular was issued to the employees of the School Board who had joined the services of the Municipal Corporation before 1983. The respondents have contended before the learned Single Judge as also in this appeal that the said circular extending time for exercising option in favour of the pension scheme also covered their cases. The learned Single Judge has, by the impugned judgment, accepted this contention and, relying on the judgment of this court in Special Civil Application No.3684 of 1983, held that the latter circular also covered the teachers who were appointed prior to 1983. On this basis and reasoning, the petition was allowed by the judgment which is in challenge before us.

3. Another group of employees of the appellant Corporation had, on similar grounds and for similar reliefs, filed Special Civil Application No.4028 of 1988 and the judgment therein was also challenged by way of a

Letters Patent Appeal in L.P.A. No.24 of 1996 and that L.P.A. was, by order dated 31.1.1996, ordered to be heard with the present L.P.A. However, L.P.A. No.24 of 1996 has come to be separately heard and decided by a Division Bench of this Court by the judgment which is reported in 1997 (2) GLH 804. It has to be noted that this court has, in the said judgment, taken the view that the appellant Corporation had introduced for the first time the pension scheme which was made effective from 1.1.1983 and it was made applicable to all the persons who were in service on the date on which the new pension scheme was made effective. Consequently, the appeal was allowed.

4. The respondents in the present case do not stand on a better footing inasmuch as the Circular No.337 dated 13.3.1987 on which the learned Single Judge has heavily relied, is also expressly and clearly applicable to the teachers who were in the CPF Scheme at that time. All the respondents have admittedly retired much earlier and therefore could not have the benefit of the option under the said circular. As elaborated by this court in the aforesaid judgment in the companion appeal, the liability of the employer ends with the retirement of the employee in the CPF Scheme as right is finally crystallized and no further statutory obligation of the employer continues. On the other hand, in a pension scheme, the obligation of the employer arises and begins when the employee retires. Thus, in the facts of the present case, the liability and obligation of the appellant Corporation having ended with the retirement of the respondents and the respondents having voluntarily continued in the CPF Scheme when the options were offered, it cannot be said that the appellants were not justified in not permitting the respondents to opt for the pension scheme when the other existing staff was offered such option. Therefore, in respectful agreement with the judgment of this court reported in 1997 (2) GLH 804 and in the facts as above, we are of the view that the respondents cannot be given the benefit of opting for the pension scheme.

5. Thus, we allow this appeal and quash and set aside the judgment and order passed in Special Civil Application No.2119 of 1992. In the circumstances of the case, the parties are directed to bear their respective costs throughout.

(KMG Thilake)

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